PUBLIC OFFICERS LAW, ARTICLE 6

SECTIONS 84-90
FREEDOM OF INFORMATION LAW

Section 84. Legislative declaration
Section 85. Short title
Section 86. Definitions
Section 87. Access to agency records
Section 88. Access to state legislative records
Section 89. General provisions relating to access to records; certain cases
Section 90. Severability

---

§84. Legislative declaration.
The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

§85. Short title. This article shall be known and may be cited as the "Freedom of Information Law."

§86. Definitions. As used in this article, unless the context requires otherwise.

1. "Judiciary" means the courts of the state, including any municipal or district court, whether or not of record.

2. "State legislature" means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof.

3. "Agency" means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.

4. "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

5. "Critical infrastructure" means systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy.

6. “Law enforcement disciplinary records” means any record created in furtherance of a law enforcement disciplinary proceeding, including, but not limited to:

(a) the complaints, allegations, and charges against an employee;

(b) the name of the employee complained of or charged;

(c) the transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing;

(d) the disposition of any disciplinary proceeding; and

(e) the final written opinion or memorandum supporting the disposition and discipline imposed including the agency's complete factual findings and its analysis of the conduct and appropriate discipline of the covered employee.

7. “Law enforcement disciplinary proceeding” means the commencement of any investigation and any subsequent hearing or disciplinary action conducted by a law enforcement agency.

8. “Law enforcement agency” means a police agency or department of the state or any political subdivision thereof, including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law, a sheriff's department, the department of corrections and community supervision, a local department of correction, a local probation department, a fire department, or force of individuals employed as firefighters or firefighter/paramedics.

9. “Technical infraction” means a minor rule violation by a person employed by a law enforcement agency as defined in this section as a police officer, peace officer, or firefighter or firefighter/paramedic, solely related to the enforcement of administrative departmental rules that (a) do not involve interactions with members of the public, (b) are not of public concern, and (c) are not otherwise connected to such person's investigative, enforcement, training, supervision, or reporting responsibilities.

10. “Retiree” means a former officer or employee of an agency, the state legislature, or the judiciary who was a member of a public retirement system of the state, as such term is defined in subdivision twenty-three of section five hundred one of the retirement and social security law and is receiving, or entitled to receive, a benefit from such public retirement system.

11. “Beneficiary” means a person designated by a member or retiree of a public retirement system of the state to receive retirement or death benefits following the death of the member or retiree.

§87. Access to agency records.

1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

i. the times and places such records are available;
ii. the persons from whom such records may be obtained; and
iii. except when a different fee is otherwise prescribed by statute:

(1) the fees for paper copies of records shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with the provisions of paragraph (c) of this subdivision.

(2) In the case where an identical record has been prepared for a previous request within the past 6 months and an electronic copy is available, an agency shall not charge a fee for the reproduction of such record, except for the actual cost of a storage device or media if one is provided to the requester in complying with such request.

(c) In determining the actual cost of reproducing a record, an agency may include only:

i. an amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record;
ii. the actual cost of the storage devices or media provided to the person making the request in complying with such request;
iii. the actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy; and
iv. preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of agency employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record.

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except those records or portions thereof that may be withheld pursuant to the exceptions of rights of access appearing in this subdivision. A denial of access shall not be based solely on the category or type of such record and shall be valid only when there is a particularized and specific justification for such denial. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except

that such agency may deny access to records or portions thereof that:

(a) are specifically exempted from disclosure by state or federal statute;

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

(c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(e) are compiled for law enforcement purposes only to the extent that disclosure would:

i. interfere with law enforcement investigations or judicial proceedings, provided however, that any agency, which is not conducting the investigation that the requested records relate to, that is considering denying access pursuant to this subparagraph shall receive confirmation from the law enforcement or investigating agency conducting the investigation that disclosure of such records will interfere with an ongoing investigation;

ii. deprive a person of a right to a fair trial or impartial adjudication;

iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or

iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) if disclosed could endanger the life or safety of any person;

(g) are inter-agency or intra-agency materials which are not:

i. statistical or factual tabulations or data;

ii. instructions to staff that affect the public;

iii. final agency policy or determinations;

iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or

(h) are examination questions or answers which are requested prior to the final administration of such questions.

(i) if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; or

(j) [Deemed repealed Dec. 1, 2027, pursuant to L.1988, c. 746, § 17.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-a of the vehicle and traffic law.

(k) [Expires and deemed repealed Dec. 1, 2029, pursuant to L.2009, c. 19, § 10; L.2009, c. 22, § 22; L.2009, c. 23, § 9; L.2009, c. 383, § 24.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-b of the vehicle and traffic law.

(k) [Expires and deemed repealed Dec. 1, 2029, pursuant to L.2009, c. 20, § 24.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-b of the vehicle and traffic law.

(l) [Expires and deemed repealed July 1, 2028, pursuant to L.2010, c. 59, pt. II, § 14.] are photographs, microphotographs, videotape or other recorded images produced by a bus lane photo device prepared under authority of section eleven hundred eleven-c of the vehicle and traffic law.

(m) [Expires and deemed repealed July 1, 2030, pursuant to L.2013, c. 189, § 15.] are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-b of the vehicle and traffic law.

(n) [Expires and deemed repealed Dec. 1, 2029, pursuant to L.2014, c. 99, § 15; L.2014, c. 101, § 15; L.2014, c. 123, § 15. See, also, par. (n) above.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-d of the vehicle and traffic law.

(o) [Expires and deemed repealed Dec. 1, 2029, pursuant to L.2015, c. 222, § 15.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-e of the vehicle and traffic law.

(p) [As added by L.2019, c. 59, pt. ZZZ, subpt. A, § 7. See, also, par. (p) below.] are data or images produced by an electronic toll collection system under authority of article forty-four-C of the vehicle and traffic law and in title three of article three of the public authorities law.

(q) [Expires and deemed repealed Dec. 1, 2029, pursuant to L.2019, c. 145, § 15.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred seventy-four-a of the vehicle and traffic law.

(r) [Expires and deemed repealed Oct. 6, 2031, pursuant to L.2021, c. 421, § 16. As added by L.2021, c. 421, § 14. See, also, pars. (r) below.] are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-e of the vehicle and traffic law.

(r) [Expires and deemed repealed Dec. 1, 2026, pursuant to L.2021, c. 460, § 14. As added by L.2021, c. 460, § 12. See, also, pars. (r) above and below.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-f of the vehicle and traffic law.

(r) [Expires and deemed repealed Dec. 1, 2030, pursuant to L.2021, c. 773, § 16. As added by L.2021, c. 773, § 13. See, also, pars. (r) above.] are photographs, microphotographs, videotape or other recorded images or information and data prepared under authority of section three hundred eighty-five-a of the vehicle and traffic law.

(s) [Expires and deemed repealed July 1, 2028, pursuant to L.2023, c. 56, pt. MM, § 21. As added by L.2023, c. 56, pt. MM, § 13. See, also, pars. (s) below.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-c-one of the vehicle and traffic law.

(s) [Expires and deemed repealed Oct. 28, 2028, pursuant to L.2023, c. 499, § 4. As added by L.2023, c. 499, § 2. See, also, pars. (s) above and below.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-g of the vehicle and traffic law.

(s) [Expires and deemed repealed Dec. 31, 2028, pursuant to L.2023, c. 502, § 4. As added by L.2023, c. 502, § 2. See, also, pars. (s) above.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eighty-f of the vehicle and traffic law.

(t) [Expires and deemed repealed Dec. 31, 2028, pursuant to L.2023, c. 500, § 4. As added by L.2023, c. 500, § 2. See, also, par. (t) below.] are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-f of the vehicle and traffic law.

(t) [Expires and deemed repealed Dec. 1, 2027, pursuant to L.2023, c. 501, § 5. As added by L.2023, c. 501, § 3. See, also, par. (t) above.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-g of the vehicle and traffic law.

(u) [Expires and deemed repealed Dec. 31, 2029, pursuant to L.2024, c. 438, § 4. As added by L.2024, c. 438, § 2. See, also, par. (u) below.] are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-g of the vehicle and traffic law.

(u) [Expires and deemed repealed Dec. 31, 2029, pursuant to L.2024, c. 442, § 4. As added by L.2024, c. 442, § 2. See, also, par. (u) above.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-h of the vehicle and traffic law.

(v) [Expires and deemed repealed Dec. 1, 2030, pursuant to L.2025, c. 481, § 4. As added by L.2025, c. 481, § 2. See, also, pars. (v) below.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-i of the vehicle and traffic law.

(v) [Expires and deemed repealed Dec. 1, 2031, pursuant to L.2025, c. 482, § 4. As added by L.2025, c. 482, § 2. See, also, pars. (v) above and below.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eighty-h of the vehicle and traffic law.

(v) [Expires and deemed repealed Dec. 31, 2030, pursuant to L.2025, c. 483, § 4. As added by L.2025, c. 483, § 2. See, also, pars. (v) above and below.] are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-h of the vehicle and traffic law.

(v) [Expires and deemed repealed Dec. 31, 2030, pursuant to L.2025, c. 485, § 4. As added by L.2025, c. 485, § 2. See, also, pars. (v) above and below.] are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-h of the vehicle and traffic law.

(v) [Expires and deemed repealed Dec. 31, 2030, pursuant to L.2025, c. 486, § 4. As added by L.2025, c. 485, § 2. See, also, pars. (v) above.] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-i of the vehicle and traffic law.

(w) is information or data, regardless of form, created, collected, recorded, or otherwise captured by an intelligent speed assistance device installed and maintained pursuant to the authority of section sixteen hundred forty-two-b of the vehicle and traffic law.

3. Each agency shall maintain:

(a) a record of the final vote of each member in every agency proceeding in which the member votes;

(b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and

(c) a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article. Each agency shall update its subject matter list annually, and the date of the most recent update shall be conspicuously indicated on the list. Each state agency as defined in subdivision four of this section that maintains a website shall post its current list on its website and such posting shall be linked to the website of the committee on open government. Any such agency that does not maintain a website shall arrange to have its list posted on the website of the committee on open government.

4. (a) Each state agency which maintains records containing trade secrets, to which access may be denied pursuant to paragraph (d) of subdivision two of this section, shall promulgate regulations in conformity with the provisions of subdivision five of section eighty-nine of this article pertaining to such records, including, but not limited to the following:

(1) the manner of identifying the records or parts;
(2) the manner of identifying persons within the agency to whose custody the records or parts will be charged and for whose inspection and study the records will be made available;
(3) the manner of safeguarding against any unauthorized access to the records.

(b) As used in this subdivision the term "agency" or "state agency" means only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor.

(c) Each state agency that maintains a website shall post information related to this article and article six-A of this chapter on its website. Such information shall include, at a minimum, contact information for the persons from whom records of the agency may be obtained, the times and places such records are available for inspection and copying, and information on how to request records in person, by mail, and, if the agency accepts requests for records electronically, by e-mail. This posting shall be linked to the website of the committee on open government.

4-a. A law enforcement agency responding to a request for law enforcement disciplinary records as defined in section eighty-six of this article shall redact any portion of such record containing the information specified in subdivision two-b of section eighty-nine of this article prior to disclosing such record under this article.

4-b. A law enforcement agency responding to a request for law enforcement disciplinary records, as defined in section eighty-six of this article, may redact any portion of such record containing the information specified in subdivision two-c of section eighty-nine of this article prior to disclosing such record under this article.

5.(a) An agency shall provide records on the medium requested by a person, if the agency can reasonably make such copy or have such copy made by engaging an outside professional service. Records provided in a computer format shall not be encrypted.

(b) No agency shall enter into or renew a contract for the creation or maintenance of records if such contract impairs the right of the public to inspect or copy the agency`s records.

6. All agencies subject to the requirements of this article shall develop a policy regarding providing a notification to public employees in the event that the agency is responding to a request for such employee's disciplinary records.

§88. Access to state legislative records.

1. The temporary president of the senate and the speaker of the assembly shall promulgate rules and regulations for their respective houses in conformity with the provisions of this article, pertaining to the availability, location and nature of records, including, but not limited to:

(a) the times and places such records are available;
(b) the persons from whom such records may be obtained;
(c) the fees for copies of such records, which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:

(a) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;
(b) messages received from the governor or the other house of the legislature, and home rule messages;
(c) legislative notification of the proposed adoption of rules by an agency;
(d) transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;
(e) internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;
(f) administrative staff manuals and instructions to staff that affect members of the public;
(g) final reports and formal opinions submitted to the legislature;
(h) final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;
(i) any other files, records, papers or documents required by law to be made available for public inspection and copying.
(j) external audits conducted pursuant to section ninety-two of the legislative law and schedules issued pursuant to subdivision two of section ninety of the legislative law.

3. Each house shall maintain and make available for public inspection and copying:

(a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes;
(b) a record setting forth the name, public office address, title, and salary of every officer or employee; and
(c) a current list, reasonably detailed, by subject matter of any records required to be made available for public inspection and copying pursuant to this section.

§89. General provisions relating to access to records; certain cases. The provisions of this section apply to access to all records, except as hereinafter specified:

1. (a) The committee on open government is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as secretariat for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and seven other persons, none of whom shall hold any other state or local public office except the representative of local governments as set forth herein, to be appointed as follows: five by the governor, at least two of whom are or have been representatives of the news media, one of whom shall be a representative of local government who, at the time of appointment, is serving as a duly elected officer of a local government, one by the temporary president of the senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The member representing local government shall be appointed for a term of four years, so long as such member shall remain a duly elected officer of a local government. The committee shall hold no less than two meetings annually, but may meet at any time. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(b) The committee shall:

i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;
ii. furnish to any person advisory opinions or other appropriate information regarding this article;
iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;
iv. request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and
v. develop a form, which shall be made available on the internet, that may be used by the public to request a record; and
vi. report on its activities and findings regarding articles six and seven of this chapter, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on open government may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:
i. disclosure of employment, medical or credit histories or personal references of applicants for employment;
ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;
iii. sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;
iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it;
v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency; or
vi. information of a personal nature contained in a workers' compensation record, except as provided by section one hundred ten-a of the workers' compensation law; or
vii. disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law; or
viii. disclosure of law enforcement arrest or booking photographs of an individual, unless public release of such photographs will serve a specific law enforcement purpose and disclosure is not precluded by any state or federal laws.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:
i. when identifying details are deleted;
ii. when the person to whom a record pertains consents in writing to disclosure;
iii. when upon presenting reasonable proof of identity' a person seeks access to records pertaining to him or her; or
iv. when a record or group of records relates to the right, title or interest in real property, or relates to the inventory, status or characteristics of real property, in which case disclosure and providing copies of such record or group of records shall not be deemed an unwarranted invasion of personal privacy, provided that nothing herein shall be construed to authorize the disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law".

2-a. Nothing in this article shall permit disclosure which constitutes an unwarranted invasion of personal privacy as defined in subdivision two of this section if such disclosure is prohibited under section ninety-six of this chapter.

2-b. For records that constitute law enforcement disciplinary records as defined in subdivision six of section eighty-six of this article, a law enforcement agency shall redact the following information from such records prior to disclosing such records under this article:
(a) items involving the medical history of a person employed by a law enforcement agency as defined in section eighty-six of this article as a police officer, peace officer, or firefighter or firefighter/paramedic, not including records obtained during the course of an agency's investigation of such person's misconduct that are relevant to the disposition of such investigation;

(b) the home addresses, personal telephone numbers, personal cell phone numbers, personal email addresses of a person employed by a law enforcement agency as defined in section eighty-six of this article as a police officer, peace officer, or firefighter or firefighter/paramedic, or a family member of such a person, a complainant or any other person named in a law enforcement disciplinary record, except where required pursuant to article fourteen of the civil service law, or in accordance with subdivision four of section two hundred eight of the civil service law,

or as otherwise required by law. This paragraph shall not prohibit other provisions of law regarding work-related, publicly available information such as title, salary, and dates of employment;

(c) any social security numbers; or

(d) disclosure of the use of an employee assistance program, mental health service, or substance abuse assistance service by a person employed by a law enforcement agency as defined in section eighty-six of this article as a police officer, peace officer, or firefighter or firefighter/paramedic, unless such use is mandated by a law enforcement disciplinary proceeding that may otherwise be disclosed pursuant to this article.

2-c. For records that constitute "law enforcement disciplinary records" as defined in subdivision six of section eighty-six of this article, a law enforcement agency may redact records pertaining to technical infractions as defined in subdivision nine of section eighty-six of this article prior to disclosing such records under this article.

3. (a) Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision five of this section. An agency shall not deny a request on the basis that the request is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because the agency lacks sufficient staffing or on any other basis if the agency may engage an outside professional service to provide copying, programming or other services required to provide the copy, the costs of which the agency may recover pursuant to paragraph (c) of subdivision one of section eighty-seven of this article. An agency may require a person requesting lists of names and addresses to provide a written certification that such person will not use such lists of names and addresses for solicitation or fund-raising purposes and will not sell, give or otherwise make available such lists of names and addresses to any other person for the purpose of allowing that person to use such lists of names and addresses for solicitation or fund-raising purposes. If an agency determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight of this article. When an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so. When doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the agency shall be required to retrieve or extract such record or data electronically. Any programming necessary to retrieve a record maintained in a computer storage system and to transfer that record to the medium requested by a person or to allow the transferred record to be read or printed shall not be deemed to be the preparation or creation of a new record.

(b) All entities shall, provided such entity has reasonable means available, accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail, using forms, to the extent

practicable, consistent with the form or forms developed by the committee on open government pursuant to subdivision one of this section and provided that the written requests do not seek a response in some other form.

(c) Each state agency, as defined in subdivision five of this section, that maintains a website shall ensure its website provides for the online submission of a request for records pursuant to this article.

4. (a) Except as provided in subdivision five of this section, any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on open government a copy of such appeal when received by the agency and the ensuing determination thereon. Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial.

(b) Except as provided in subdivision five of this section, a person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two. Failure by an agency to conform to the provisions of paragraph (a) of this subdivision shall constitute a denial.

(c) The court in such a proceeding:
(i) may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed, and when the agency failed to respond to a request or appeal within the statutory time; and
(ii) shall assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed and the court finds that the agency had no reasonable basis for denying access.
(d)(i) Appeal to the appellate division of the supreme court must be made in accordance with subdivision (a) of section fifty-five hundred thirteen of the civil practice law and rules.
(ii) An appeal from an agency taken from an order of the court requiring disclosure of any or all records sought:
(A) shall be given preference;
(B) shall be brought on for argument on such terms and conditions as the presiding justice may direct, upon application of any party to the proceeding; and
(C) shall be deemed abandoned if the agency fails to serve and file a record and brief within sixty days after the date of service upon the petitioner of the notice of appeal, unless consent to further extension is given by all parties, or
unless further extension is granted by the court upon such terms as may be just and upon good cause shown.

5. (a) (1) A person acting pursuant to law or regulation who, subsequent to the effective date of this subdivision, submits any information to any state agency may, at the time of submission, request that the agency except such information from disclosure under paragraph (d) of subdivision two of section eighty-seven of this article. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

(1-a) A person or entity who submits or otherwise makes available any records to any agency, may, at any time, identify those records or portions thereof that may contain critical infrastructure information, and request that the agency that maintains such records except such information from disclosure under subdivision two of section eighty-seven of this article. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.
(2) The request for an exception shall be in writing and state the reasons why the information should be excepted from disclosure.
(3) Information submitted as provided in subparagraphs one and one-a of this paragraph shall be excepted from disclosure and be maintained apart by the agency from all other records until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction.

(b) On the initiative of the agency at any time, or upon the request of any person for a record excepted from disclosure pursuant to this subdivision, the agency shall:

(1) inform the person who requested the exception of the agency's intention to determine whether such exception should be granted or continued;
(2) permit the person who requested the exception, within ten business days of receipt of notification from the agency, to submit a written statement of the necessity for the granting or continuation of such exception;
(3) within seven business days of receipt of such written statement, or within seven business days of the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor; copies of such determination shall be served upon the person, if any, requesting the record, the person who requested the exception, and the committee on open government.

(c) A denial of an exception from disclosure under paragraph (b) of this subdivision may be appealed by the person submitting the information and a denial of access to the record may be appealed by the person requesting the record in accordance with this subdivision.

(1) Within seven business days of receipt of written notice denying the request, the person may file a written appeal from the determination of the agency with the head of the agency, the chief executive officer or governing body or their designated representatives.
(2) The appeal shall be determined within ten business days of the receipt of the appeal. Written notice of the determination shall be served upon the person, if any, requesting the record, the person who requested the exception and the committee on public access to records. The notice shall contain a statement of the reasons for the determination.

(d)(i) A proceeding to review an adverse determination pursuant to paragraph (c) of this subdivision may be commenced pursuant to article seventy-eight of the civil practice law and rules. Such proceeding, when brought by a person seeking an exception from disclosure pursuant to this subdivision, must be commenced within fifteen days of the service of the written notice containing the adverse determination provided for in subparagraph two of paragraph (c) of this subdivision. The proceeding shall be given preference and shall be brought on for argument on such terms and conditions as the presiding justice may direct, not to exceed forty-five days.
(ii) Appeal to the appellate division of the supreme court must be made in accordance with subdivision (a) of section
fifty-five hundred thirteen of the civil practice law and rules.
(iii) An appeal taken from an order of the court requiring disclosure:

(A) shall be given preference; and
(B) shall be brought on for argument on such terms and conditions as the presiding justice may direct, upon application by any party to the proceeding; and
(C) shall be deemed abandoned when the party requesting an exclusion from disclosure fails to serve and file a record and brief within sixty days after the date of the notice of appeal, unless consent of further extension is given by all parties, or unless further extension is granted by the court upon such terms as may be just and upon good cause shown.

(e) The person requesting an exception from disclosure pursuant to this subdivision shall in all proceedings have the burden of proving entitlement to the exception.
(f) Where the agency denies access to a record pursuant to paragraph (d) of subdivision two of section eighty-seven of this article, the agency shall have the burden of proving that the record falls within the provisions of such exception.
(g) Nothing in this subdivision shall be construed to deny any person access, pursuant to the remaining provisions of this article, to any record or part excepted from disclosure upon the express written consent of the person who had requested the exception.
(h) As used in this subdivision the term "agency" or "state agency" means only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor.

6. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records. A denial of access to records or to portions thereof pursuant to this article shall not limit or abridge any party's right of access to such records pursuant to the civil practice law and rules, the criminal procedure law, or any other law.

7. Nothing in this article shall require the disclosure of the home address of an officer or employee, former officer or employee, or of a retiree of a public retirement system of the state, as such term is defined in subdivision twenty-three of section five hundred one of the retirement and social security law; nor shall anything in this article require the disclosure of the name or home address of a beneficiary of a public retirement system of the state, as such term is defined in subdivision twenty-three of section five hundred one of the retirement and social security law, or of an applicant for appointment to public employment; provided however, that nothing in this subdivision shall limit or abridge the right of an employee organization, certified or recognized for any collective negotiating unit of an employer pursuant to article fourteen of the civil service law, to obtain the name or home address of any officer, employee or retiree of such employer, if such name or home address is otherwise available under this article.

8. Any person who, with intent to prevent the public inspection of a record pursuant to this article, willfully conceals or destroys any such record shall be guilty of a violation.

9. When records maintained electronically include items of information that would be available under this article, as well as items of information that may be withheld, an agency in designing its information retrieval methods, whenever practicable and reasonable, shall do so in a manner that permits the segregation and retrieval of available items in order to provide maximum public access.

10. Nothing in this article shall be construed to limit a person or entity that is a party to any civil or criminal action or proceeding from gaining access to records pursuant to this article relating to such action or proceeding,

provided, however, that nothing in this subdivision shall prevent the denial of access to such records or portions thereof after providing particularized and specific justification that such records may be withheld pursuant to this article.

§90. Severability.

If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.